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Action by James M. Kane against Lucy Hobday. Judgment for plaintiff, and defendant brings error. Affirmed.

*J. N. Stubbs*, of Woods Cross Roads, for plaintiff in error.

*Howard L. Anderson*, of Richmond, for defendant in error.

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LEWELLING et al. v. LEWELLING.

Jan. 16, 1913.

[76 S. E. 903.]

**Judgment (§ 715\*)—Conclusiveness—Matters Concluded.**—Though a bill by the surviving partner for a settlement of the partnership accounts was dismissed on appeal on the ground that the accounts were in such confusion that no proper settlement could be made, that will not preclude the surviving partner, his individual realty having been sold under a mortgage to pay for the firm debts, from proving the sale price as a debt against the partnership; it appearing that the property was sold in a creditor's suit, and that this claim was then allowed against the partnership in a consolidated action which included the creditor's suit and the bill by the surviving partner.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1244-1247; Dec. Dig. § 715.\* 1 Va.-W. Va. Enc. Dig. 651.]

Appeal from Circuit Court of City of Elizabeth.

Bill by Thomas L. Lewelling against James Lewelling, administrator, and others. From a decree for complainant, defendants appeal. Affirmed.

*S. Gordon Cumming* and *Sidney J. Dudley*, both of Hampton, and *John W. Friend*, of Newport News, for appellants.

*Lett & Massie* and *Batchelor & Phillips*, all of Newport News, for appellee.

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COMMONWEALTH et al. v. SCHMELZ.

Jan. 16, 1913.

[76 S. E. 905.]

**1 Taxation (§ 273\*)—Assessment—Personal Property of Firm—Situs.**—Code 1904, § 492, provides that firm property shall be listed for taxation by and be taxed to the firm. Section 494 declares that the commissioner shall make a personal application to each person, firm, or corporation residing, doing business, or having an office in

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.